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REPLY TO THE ATTENTION OF:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 20 1997

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Mr. Johnny W. Reising
United States Department of Energy
Feed Materials Production Center
P.O. Box 398705
Cincinnati, Ohio 45239-8705

SRF-5J

RE: June 16, 1997
OU 4 Dispute Letter

Dear Mr. Reising:

Pursuant to Paragraph 12.D. of the May 15, 1997, Agreement in Principle, the United States Environmental Protection Agency (U.S. EPA) has reviewed the United States Department of Energy's (U.S. DOE) June 16, 1997, proposal for resolution of the Operable Unit 4 dispute. While we think the proposal evinces progress towards final resolution of the dispute, U.S. EPA must, for the reasons set forth below, disapprove the proposal. We look forward to working with U.S. DOE to bring this matter to resolution by July 14, 1997.

Schedules

U.S. EPA concurs with U.S. DOE's proposed date of September 15, 1997, for submittal of the draft Explanation of Significant Differences for Silo 3 to EPAs, but believes that U.S. DOE can more expeditiously complete the Silo 1 and 2 Feasibility Study/Proposed Plan (FS/PP) and Record of Decision (ROD) amendment activities and that additional interim milestones need to be included in the enforceable schedules. Therefore, U.S. EPA counter proposes the following schedule:

- | | | |
|----|-------------------------------------------------------|-------------------|
| A. | Award of multi-tech proof of principle contract | August 10, 1998 |
| B. | Submittal of Draft Silo 1 and 2 FS/PP to EPAs | October 1, 1999 |
| C. | Submittal of Draft Silo 1 and 2 ROD amendment to EPAs | September 1, 2000 |

Resolution of Stipulated Penalties

In accordance with Section XVII.A.2. of the Amended Consent Agreement, U.S. EPA may assess stipulated penalties of up to \$5,000 for the first week and \$10,000 for each additional week for

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U.S. DOE's failure to meet Operable Unit 4 milestones. In paragraph 13 of the Agreement in Principle, for the purposes of calculating stipulated penalties and on the condition that this matter is formally resolved by July 14, 1997, U.S. EPA agreed to not assess stipulated penalties for days of non-compliance after May 15, 1997. Consequently, U.S. EPA may assess stipulated penalties of as much as \$1,335,000 calculated as follows:

Milestone	Date Due	Weeks of Non-Compliance	Penalty Amount
New Radon Treatment System, Title I Design, Preliminary	09/30/96	33	\$325,000
Submit Phase II Remedial Action Workplan	10/07/96	32	\$315,000
Silo Superstructure Award/ Construction	11/13/96	27	\$265,000
Design Criteria Package, Pre-Final	12/04/96	24	\$235,000
New Radon Treatment System, Title I/II Design, Pre-Final	01/02/97	20	\$195,000
		Total	<u>\$1,335,000</u>

Because the Amended Consent Agreement specifies maximum rather than specific per week penalty amounts, in consideration of appropriate factors U.S. EPA may assess less than the maximum penalty amount. For example, U.S. DOE's good faith efforts to resolve this dispute and an enforceable U.S. DOE commitment to perform a project or projects which improve, protect, or reduce risks to public health or the environment at large, are factors U.S. EPA can take into account when determining a final penalty amount.

Credit for "Above and Beyond" Activities

U.S. DOE support of the Citizens Task Force, Ohio Environmental Protection Agency, Community Reuse Organization, and the Public Water Supply are all commendable efforts. However, for the most part U.S. DOE has extended this support not to facilitate settlement of the Operable Unit 4 dispute but for other pre-existing reasons. U.S. EPA cannot mitigate penalty claims in consideration of such pre-existing efforts. However, to the extent these efforts were exclusively directed towards resolution of this dispute, U.S. EPA may take those efforts in consideration when determining the penalty amount.

Supplemental Environmental Project (SEP) Trust

U.S. EPA cannot consider unspecified activities to be performed at a later date or activities performed by third parties when determining the appropriate amount of a penalty. Any settlement of this matter that includes consideration of SEP type activities must also include a detailed

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description of the project with an enforceable schedule for implementation by U.S. DOE or its contractor. Therefore, U.S. EPA cannot accept U.S. DOE's proposal to establish a SEP trust.

Potential SEPs

U.S. EPA would like to explore some of these projects further with U.S. DOE. We propose a meeting or conference call within the next week. Among other things, we would expect information concerning implementation time frames.

Cash Penalty

Consistent with past settlements and other Agency policies, U.S. EPA believes some portion of the penalties must be paid in the form of a cash payment. We are also willing to discuss this issue in a conference call and expect U.S. DOE to include a cash penalty offer amount in its response to this letter.

Other Terms of Settlement

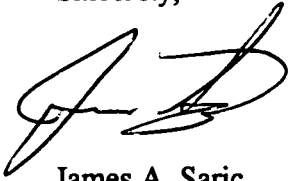
Another issue which must be resolved involves terms to be included in the final settlement document. Specifically, unless and until U.S. DOE amends the Operable Unit 4 ROD and U.S. EPA approves new implementation schedules, the existing ROD requirements and associated schedules continue to apply to U.S. DOE. Therefore, for the period of time from the settlement of this matter until amendment of the ROD and schedules, U.S. DOE may fail to meet other Operable Unit 4 milestones. U.S. EPA may agree to stay enforcement of those existing requirements but only so long as U.S. DOE is in compliance with agreed upon ESD, ROD amendment, and SEP schedule dates as well as any other term of settlement. Failure to meet the terms of settlement would expose U.S. DOE to penalties for non-compliance with existing ROD and implementation schedules.

We look forward to U.S. DOE's response to this letter and reiterate our willingness to participate in direct negotiations in the interim.

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Please contact me at (312) 886-0992 if you have any questions regarding this matter.

Sincerely,



James A. Saric
Remedial Project Manager
Federal Facilities Section
SFD Remedial Response Branch #2

cc: Tom Schneider, OEPA-SWDO
Bill Murphie, U.S. DOE-HDQ
John Bradburne, FERMCO
Charles Little, FERMCO
Terry Hagen, FERMCO
Tom Walsh, FERMCO